



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5120
Facsimile: (202) 418-5524
www.cftc.gov

Legal Division

February 7, 2022

Via CM/ECF

Honorable John G. Koeltl
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

APPLICATION GRANTED
SO ORDERED



John G. Koeltl, U.S.D.J.

Re: *United States v. Hayes et al.*, No. 20-cr.-500-JGK (S.D.N.Y.)

Dear Judge Koeltl:

Undersigned counsel represents the non-party Commodity Futures Trading Commission (“CFTC” or “Commission”). For the following reasons, the CFTC respectfully requests that the Court enter the proposed briefing schedule, agreed to by Defendants and specified below, with regard to a Rule 17(c) subpoena served on the CFTC on January 27, 2022, by Defendants Arthur Hayes, Ben Delo, and Samuel Reed.

The subpoena seeks two categories of nonpublic Commission documents and materials. Defendants also submitted a letter to the Commission requesting the Commission’s authorization for production of potentially responsive documents, pursuant to the CFTC’s *Touhy* Regulations. *See generally* 5 U.S.C. § 301; *Touhy v. Ragen*, 340 U.S. 462 (1951); 17 C.F.R. § 144.4(a) (“No employee of the Commission shall ... produce any material contained in the files of the Commission or disclose any information relating to material contained in the files of the Commission ... unless authorized to do so by the Commission.”). Defendants have not identified particular documents or materials they believe to be potentially responsive as to either part of their request. The return date on Defendant’s Rule 17(c) subpoena is February 7, 2022.

Counsel for the CFTC has conveyed to counsel for Defendants that the subpoena is objectionable on numerous grounds. Counsel for the CFTC and Defendants met and conferred on February 2, 2022, but have been unable to reach a resolution as to these objections. Accordingly, the CFTC concluded that a motion to quash will likely be necessary, and proposed the following briefing schedule:

The CFTC’s Motion to Quash	February 11, 2022
Defendants’ Response	February 18, 2022
The CFTC’s Reply	February 25, 2022

Counsel for Defendants have agreed to this proposed schedule.

The CFTC is cognizant that trial in the above-captioned case is set to begin at the end of March 2022. However, the proposed briefing schedule is reasonable under the circumstances, given the late date at which Defendants' Rule 17(c) subpoena was received; the need to engage the Commission's *Touhy* authorization process; and the breadth of the requested categories of documents and materials, which on their face seek only internal and nonpublic CFTC investigative notes, communications, and other deliberative materials of no apparent relevance to Defendants, and materials that would have been prepared, if at all, in anticipation of litigation, including the civil enforcement action the CFTC ultimately filed against Defendants in *CFTC v. HDR Glob. Trading Ltd.*, No.1:20-cv-08132 (S.D.N.Y.).

The CFTC therefore respectfully requests that the Court enter the briefing schedule as proposed above.

Sincerely,

/s/ Raagnee Beri
Raagnee Beri*
Senior Assistant General Counsel
Legal Division
Commodity Futures Trading Commission

*Motion for *pro hac vice* motion pending

cc: All counsel of record